

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 20327
[Redacted],)	
)	DECISION
Petitioner.)	
_____)	

On June 29, 2007, the staff of the Revenue Operations Division (Division) of the Idaho State Tax Commission issued a Notice of Deficiency Determination to [Redacted] (taxpayer) reducing the taxpayer's refund for the taxable year 2006 by the amount of \$429.

On June 14, 2007, the taxpayer protested a correction notice sent to her by the Division. The taxpayer stated she was not a student and that the applicable exemption [Redacted] was for an individual participating in a government sponsored program for the primary purpose of training, research, or study. The Division reviewed the information the taxpayer provided but determined the correction should stand. The Division issued a Notice of Deficiency Determination and forwarded the matter for administrative review.

The Tax Commission reviewed the matter and sent the taxpayer a letter giving her two options for having the Notice of Deficiency Determination redetermined. The taxpayer did not respond. The Tax Commission sent the taxpayer a follow-up letter but still received no response from the taxpayer. Therefore, the Tax Commission issues its decision based upon the information available.

[Redacted]. [Redacted]. The taxpayer filed a 2006 nonresident Idaho income tax return reporting the income she received during the year, but then she excluded the income based on Article 18 section (3) of the United States – [Redacted]Income Tax Convention. The taxpayer stated she was in the United States under a state approved trainee program. She stated she was

not a student but was training under an internship. Attached to the taxpayer's Idaho income tax return was her W-2 Wage and Tax Statement and a copy of her federal filing on Form 1040NR-EZ. The taxpayer also provided a copy of the pertinent Articles of the United States – [Redacted] Income Tax Convention.

Article 18 of the United States – [Redacted] Income Tax Convention [Redacted] sets forth certain provisions for students and trainees. Article 18 states:

Students and Trainees

(1) (a) An individual who is a resident of one of the Contracting States at the time he becomes temporarily present in the other Contracting State and who is temporarily present in that other Contracting State for the primary purpose of-

- (i) Studying at a university or other recognized educational institution in that other Contracting State, or
- (ii) Securing training required to qualify him to practice a profession or professional specialty, or
- (iii) Studying or doing research as a recipient of a grant, allowance, or award from a governmental, religious, charitable, scientific, literary, or educational organization,

shall be exempt from tax by that other Contracting State with respect to amounts described in subparagraph (b) for a period not exceeding 5 taxable years from the date of his arrival in that other Contracting State.

(b) The amounts referred to in subparagraph (a) are-

- (i) Gifts from abroad for the purpose of his maintenance, education, study, research, or training;
- (ii) The grant, allowance, or award;
- (iii) Any other payment from the Contracting State of which the individual is a resident, except income from the performance of personal services; and
- (iv) Income from personal services performed in that other Contracting State in an amount not in excess of 2,000 United States dollars or its equivalent in Polish zlotys for any taxable year.

(2) An individual who is a resident of one of the Contracting States at the time he becomes temporarily present in that other Contracting State as an employee of, or under contract with, a resident of the first-mentioned Contracting State, for the primary purpose of-

- (a) Acquiring technical, professional, or business experience from a person other than that resident of the first-mentioned Contracting State or other than a person related to such resident, or

(b) Studying at a university or other recognized educational institution in that other Contracting State, shall be exempt from tax by that other Contracting State for a period not exceeding 1 year with respect to his income from personal services in an aggregate amount not in excess of 5,000 United States dollars or its equivalent in Polish zlotys.

(3) An individual who is a resident of one of the Contracting States at the time he becomes temporarily present in the other Contracting State and who is temporarily present in that other Contracting State for a period not exceeding 1 year, as a participant in a program sponsored by the Government of that other Contracting State, for the primary purpose of training, research, or study; shall be exempt from tax by that other Contracting State with respect to his income from personal services in respect of such training, research, or study performed in that other Contracting State in an aggregate amount not in excess of 10,000 United States dollars or its equivalent in Polish zlotys.

(4) The benefits provided under Article 17 and paragraph (1) of this Article shall, when taken together, extend only for such period of time, not to exceed 5 taxable years from the date of arrival of the individual claiming such benefits, as may reasonably or customarily be required to effectuate the purpose of the visit. The benefits provided under Article 17 shall not be available to an individual if, during the immediately preceding period, such individual enjoyed the benefits of paragraph (1) of this Article.

The taxpayer claimed that \$10,000 of her income is exempted by section (3) of Article 18 of the Treaty. However, section (3) states that for the \$10,000 to be exempt, the individual has to be present in the Contracting State for less than one year as a participant of a government sponsored program of that contracting state for the primary purpose of training, research, or study. The taxpayer's federal income tax return states that the taxpayer was in the United States in 2004, 2005, and 2006. Although the [Redacted] does not specifically state it, the Tax Commission believes the intent [Redacted] was to exempt the personal service income in the first year that the individual was temporarily present in the Contracting State not each successive year the individual is present in the Contracting State for less than a calendar year.

In addition to the time the taxpayer was in the United States, the Tax Commission found that the organization that brought the taxpayer to the United States was a [Redacted] employment

agency. The taxpayer listed the academic institution she attended as the [Redacted]. A search of that organization revealed that it is a labour exchange institution authorized by the [Redacted] government to find jobs for [Redacted] citizens with overseas employers. Section (3) of Article 18 [Redacted] states that the individual has to be a participant of a government sponsored program of the Contracting State where the individual is temporarily present. The [Redacted] does not appear to be associated with any United States government program. Consequently, the taxpayer does not qualify for the income exemption of section (3).

For all practical appearances, the taxpayer was in Idaho for employment purposes. The program may have been set up [Redacted] as an internship; however, it does not qualify for the exemption of Article 18 section (3) of the Treaty. The income was considered wages and comes under the classification of income derived from the performance of personal services. Article 16 [Redacted] discusses the taxability of salaries, wages, and other remuneration for personal services. It states the income from the performance of personal services may be taxed if the individual is present in the contracting state for a period aggregating more than 183 days in the taxable year. The taxpayer stated she was in the United States for 335 days during 2006; therefore, any personal services income is taxable by the United States and likewise by the state of Idaho.

The Division corrected the taxpayer's 2006 Idaho income tax return thinking that the taxpayer was a student and exempted \$2,000 of her personal services income. The taxpayer argued that she qualified for the \$10,000 exemption of personal services income. However, the Tax Commission finds that the taxpayer did not have any exempt personal services income and, therefore, finds that all the taxpayer's income is taxable by Idaho.

WHEREFORE, the Notice of Deficiency Determination dated June 29, 2007, is hereby MODIFIED, in accordance with the provisions of this decision and, as so modified, is APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the taxpayer pay the following tax and interest:

<u>YEAR</u>	<u>TAX</u>	<u>INTEREST</u>	<u>TOTAL</u>
2006	\$146	\$ 9	\$155

Interest is calculated to March 1, 2008.

DEMAND for immediate payment of the foregoing amount is hereby made and given.

An explanation of the taxpayer's right to appeal this decision is enclosed with this decision.

DATED this _____ day of _____, 2007.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of _____, 2007, a copy of the within and foregoing DECISION was served by sending the same by United States mail, postage prepaid, in an envelope addressed to:

[Redacted]

Receipt No.
